

DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
SPECIAL EDUCATION DIVISION
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This handout is based on the Reauthorized Individuals with Disabilities Education Act (IDEA 2004). Federal regulations implementing IDEA 2004 are anticipated in early 2006; the checklist below may or may not reflect what the final federal regulations will require. Thus you may want to consult with your school district attorney.

DISCIPLINE UNDER IDEA 2004

There are several discipline options available under IDEA. These include:

1. Ten school days or less: short term suspensions, placement in an appropriate interim alternative educational setting, or placement in another setting, all for 10 school days or less;
2. 45 School Days for weapons/drugs/serious bodily injury: placement for 45 school days in an appropriate interim alternative educational setting, for possession of weapons, or use, possession, or sale, or solicitation of a sale of drugs or infliction of serious bodily injury;
3. 45 School Day hearing officer Order for dangerous and violent students: Quasi - Injunction as the result of a due process hearing, for dangerous and violent students, placing student in a 45 school day alternative educational placement;
4. Court Injunction: Extent and duration of injunction determined by court for dangerous and violent student.
5. Long-term suspension or expulsion: suspensions in excess of 10 consecutive days, or in excess of 10 cumulative days if a pattern of suspension is created, if the student's conduct is determined unrelated to the disability;

Below is a description of the specific discipline provisions in IDEA 2004.

NOTE: Services must be provided to students with disabilities who are suspended for more than 10 days in a school year if school personnel decide services are needed to enable the student to appropriately progress. However, if such suspensions which exceed 10 days in a school year are long-term suspensions or disciplinary changes of placements, then the IEP team must decide upon continued services and the student's continued services must amount to a free appropriate public education, and must continue to allow progress in the general education curriculum.

- I. Ten school days or less: A student may be removed from his placement by the school district's designee, to an appropriate interim alternative educational setting, another setting, or suspension, including a suspension without the provision of educational services, for not more than 10 school days.
- II. 45 school days: A student's placement may be changed for 45 school days by the school district's designee, to an appropriate interim alternative educational setting, if: 1. the student carried or possessed a weapon at school or to a school function; or 2. knowingly possessed or used illegal

drugs or sells or solicits the sale of a controlled substance while at school or a school function; or

3. inflicts serious bodily injury while at school, on school premises, or at a school function. A parent must be immediately notified of the decision to take this disciplinary action and provided a copy of the procedural safeguards.

III. Dangerous Students: If the school district believes a student will injure himself or others, the school district has the right to initiate an expedited due process hearing to obtain an Order to change the student's placement. The parent must be notified immediately by the district of the decision to take this action and provided a copy of the procedural safeguards. At that hearing, the hearing officer may order a change in placement to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer:

- determines the school district has demonstrated that maintaining the current placement of such student is substantially likely to result in injury to the student or others;
- determines that the interim alternative educational setting enables the student to continue to participate in the general curriculum and continue to receive a free appropriate public education.

IV. Manifestation Determination: No later than ten school days after the date on which the decision to take a disciplinary action involving long-term removal from the child's placement (for more than 10 consecutive days or in excess of 10 days cumulatively if a pattern of suspension is created), or implement a disciplinary change of placement the relevant member(s) of IEP team and the parent shall determine whether there is a relationship between the student's disability and the behavior subject to the disciplinary action. If the conduct is determined unrelated to the disability, disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to student's without disabilities. However, in that event the student **must still receive a free appropriate public education which enables them to continue to progress in the general education curriculum**. If a parent disagrees with a determination that the student's behavior was not a manifestation of his disability, or with any decision regarding placement in a disciplinary situation, the parent has the right to request an expedited due process hearing. If the behavior is determined to be a manifestation of the disability, no long-term suspension or expulsion may be implemented.

A. Factors for members of IEP team to consider after review of all relevant information in the student's file and any relevant information provided by the parent:

- If the conduct was caused by, or had a direct and substantial relationship to, the child's disability; or
- If the conduct was the direct result of the school's failure to implement the IEP.

V. Functional Behavioral Assessment and Behavior Intervention Plan: Except in 45 school days removals for drugs, weapons and serious bodily injury, if the conduct is a manifestation of the student's disability, the IEP team shall conduct a functional behavioral assessment (see suggestions and explanation at end of document) and implement a behavioral intervention plan (see suggestions and explanation at end of document) if not done prior the behavior that resulted in the discipline action. If the student already has a behavioral intervention plan, the IEP team shall review the plan and modify it, as necessary, to address the behavior involved in the

disciplinary action. In cases of 45 school day removal for drugs, weapons, and serious bodily injury, irrespective of whether the behavior is determined to be a manifestation of the child's disability, the child shall receive, as appropriate, a functional behavioral assessment, behavior intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

VI. Access to Services: Any interim alternative educational setting determination involving a disciplinary change of placement (a long-term suspension):

- will be made by the IEP team
- must be selected to enable the student to continue to progress in the general curriculum and to receive services required by the IEP
- must include services and modifications designed to address the behavior involved in the disciplinary action so that it does not recur.

VII. "Stay-put" under disciplinary actions:

If a parent requests a due process hearing regarding the discipline action to challenge the interim alternative educational setting or the manifestation determination, the student will remain in that interim alternative educational setting pending the hearing decision or until expiration of the time period of the interim alternative educational setting, whichever comes first (unless the parties agree otherwise).

Notes:

1. A functional behavioral assessment can be a formal or informal assessment to identify the function or purpose the behavior serves for the student so that classroom interventions and behavior support plans can be developed to improve behavior. The assessment could include observations of the behavior, and interviews with family, teachers, and the student, so as to determine the frequency, antecedent and response of the targeted behavior.
2. A behavior intervention plan could include:
 - A. A definition of the target behavior in observable terms;
 - B. Identification of goals that address the behavior (increase, decrease behavior);
 - C. A clear statement of the objective(s) for the student;
 - D. Evaluation criteria of plan and schedule for evaluation;
 - E. CAP (criteria for acceptable performance);
 - F. An outline of interventions, instruction (curricula), and resources that will be utilized to implement the plan;
 - G. A description of inservice of staff who will implement and monitor plan; and
 - H. A statement of each person's responsibility in implementing the plan.
3. Alternative Educational Settings may include alternative schools, in-school suspension, homebound services, or other settings as determined by the IEP team.